



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

LARRY JAMES TYLER,
Plaintiff,

vs.

JAMES HUDSON, *Sheriff*, DIANN WILKS,
Medical Director, and DR. JOHN TROGOON,
Doctor,
Respondent,

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Civil Action No. 9:22-cv-511-MGL

**ORDER ADOPTING FIRST REPORT AND RECOMMENDATION,
DISMISSING TROGOON WITHOUT PREJUDICE,
AND ALLOWING ADDITIONAL TIME TO OBJECT
TO THE SECOND REPORT AND RECOMMENDATION**

Larry James Tyler (Tyler), proceeding pro se, filed a civil rights complaint under 42 U.S.C. § 1983 against Defendants James Hudson (Hudson), Diann Wilks (Wilks), and Dr. John Trogoon (Trogoon).

This matter is before the Court for review of two Reports and Recommendations (collectively, the Reports) of the United States Magistrate Judge. The first (Report I), recommends the Court dismiss Trogoon without prejudice under Federal Rule of Civil Procedure 4(m). The second (Report II), recommends granting Hudson's motion for summary judgment, dismissing Hudson with prejudice, and denying Tyler's motion for summary judgment and motion to strike. The Reports were made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Reports to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Reports on April 11, 2023. The Clerk's Office entered a response from Tyler on April 26, 2023. The response states that he consents to dismissal of Trogoon from this action but asks the case to move forward against the other Defendants. Tyler appears to believe Report I recommended dismissal of the case in its entirety. No Defendant filed any reply.

“[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845–46 (4th Cir. 1985).

Because Tyler failed to object to Trogoon's dismissal, the Court will adopt Report I and dismiss Trogoon without prejudice.

From Tyler's response, is unclear to the Court whether he received and reviewed Report II. Although he asks the case to move forward against Wilks and Hudson, he fails to directly address any of the analysis or conclusions of Report II. In other words, the response appears to consider only Report I. Out of an abundance of caution, the Court will direct the Clerk's Office to send Tyler another copy of Report II and provide Tyler an additional fourteen days to object.

After a thorough review of the Reports and the record in this case under the standard set forth above, the Court adopts Report I and incorporates it herein. Therefore, it is the judgment of the Court Trogon is **DISMISSED WITHOUT PREJUDICE**.

Additionally, the Clerk's Office is directed to send Tyler a copy of Report II. Tyler shall file any objection to Report II no later than June 6, 2023.

IT IS SO ORDERED.

Signed this 23rd day of May 2023, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.